IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9128 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ROMA TALKIES

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR KT DAVE, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/10/2000

ORAL JUDGEMENT

Rule. Mr KT Dave, learned AGP waives service of Rule for the respondents.

2. This petition under Article 226 of the Constitution raises a question of interpretation of the

provisions of clause (b) of sub-section (6) of Section 6 of the Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as "the Act").

3. The facts giving rise to the petition are as under :-

Under the Act, it has been provided that for cities with the population of upto 3 lacs, owners of the cinema halls are given option to pay entertainment tax in two different modes, either loose tax or fixed tax, as per the option offered. The petitioner herein exercised the option for paying the entertainment tax as fixed tax with effect from 1.10.1993. The option to pay fixed tax exercised by the petitioner continued till 20.8.1997. Thereafter with effect from 21.8.1997, the petitioner exercised the option for paying loose tax. The provisions of the Act particularly sub-section (6) of Section 6 permit the cinema owner to change the option subject to the condition that option once exercised cannot be changed for a period of 12 months. The petitioner who had exercised the option for paying loose tax with effect from 22.8.1997 gave another option on 24.11.1998 by submitting the application for revoking the earlier option of paying loose tax to the prescribed officer in the prescribed form. The prescribed Officer i.e the Mamlatdar, Gondal passed order dated 26.11.1998 (Annexure "C") accepting the petitioner's option to pay entertainment tax as fixed tax. Accordingly, the permission was granted to pay fixed tax with effect from 27.11.1998 (Friday). The Collector intimated to the Mamlatdar to take the matter in review on the ground that the Mamlatdar could not have passed the order for accepting the option for payment of fixed tax before expiry of a period of 30 days from the date of receipt of the application for revoking the previous option. In view of the said instructions, the Mamlatdar passed the order dated 6.1.1999 (Annexure "B") granting permission for paying fixed tax with effect from 21.12.1998 instead of 27.11.1998. On the basis of the said order dated 6.1.1999 (Annexure "B"), the Mamlatdar issued further order dated 12.1.1999 (Annexure "A") calling upon the petitioner to pay the difference between the loose tax and fixed tax for a period of four weeks from 27.11.1998 to 24.12.1998. The petitioner carried the matter before the higher authority viz. the Commissioner of Entertainment Tax who rejected the appeal by his impugned order dated 11.10.1999 (Annexure "B"). Hence, the petitioner has approached this Court.

4. Of course, the Commissioner of Entertainment Tax

has not passed the impugned order on merits, but only on the ground that since the Mamlatdar has passed the impugned order at Annexure "A") on the basis of the instructions issued by the Government, the Commissioner of Entertainment Tax cannot sit in appeal over the view taken by the Government.

5. The provisions of sub-section (6) of Section 6 of the Act read as under :-

"(6) (a) A proprietor of a cinema who had opted for payment of tax under Sub-sec (2) may at the time but not before the expiry of a period of twelve months from the date of commencement of option give a notice in such form and in such manner as may be prescribed, addressed to the prescribed officer, to revoke his option;

Provided that any proprietor of a cinema who has opted for payment of tax at any time (before the (Amendment) Act, 1993 (Guj.13 of 1993) may at any time but not before the expiry of period of three months from the date of commencement of option give such notice to revoke the option.

(b) The option shall stand revoked on the expiry of 30 days after the receipt of notice by the prescribed officer under clause (a).

(c) Notwithstanding anything contained in sub-sec.(2), a proprietor of a cinema who had revoked his option, may at any time but not before the expiry of a period of twelve months from the date of revocation of the option exercise the option referred to in that sub-section."

The controversy in this petition is about interpretation of clause (b). According to the respondents, when the petitioner submitted his application for revoking the option to pay loose tax on 24.11.1998, the same could not have been accepted by the Mamlatdar for a period of one month. This interpretation is obviously erroneous. Since the interpretation is required to be made in the context of the provisions of preceding clause (a) which give liberty to the proprietor of a cinema to change his option and if the proprietor gives such a notice for change of option, the option stands revoked on the expiry of 30 days after the receipt of the notice by the prescribed officer even if the

prescribed office does not take any steps meaning thereby the notice for change of option is deemed to have been granted. It does not mean that the prescribed officer does not have the power to accept the option before the expiry of a period of 30 days. Accordingly, the Mamlatdar had not committed any error in accepting the petitioner's application dt. 24.11.1998 on 26.11.1998.

6. In view of the above discussion, the petition is allowed. The impugned orders at Annexures "A" and "B" are quashed and set aside.

Rule is made absolute. There shall be no order as to costs.

October 16, 2000 (M.S. Shah, J.)
sundar/-